

**KENTUCKY PERSONNEL BOARD
MINUTES OF MAY 10, 2013**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on May 10, 2013, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Ramona Herndon, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD APRIL 12, 2013**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Ms. Herndon seconded, and the motion carried 7-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised that he, Mr. Crocker and some of the hearing officers will be attending the Kentucky Association of Administrative Adjudicators (KAAA) training on May 17, 2013, at the Kentucky History Center. They also plan to attend hearing officer training to be conducted by the Office of the Attorney General on June 21, 2013.

Mr. Sipek informed the Board members that they will find court rulings in their packets.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. **PERSONNEL CABINET’S REPORT**

The Hon. Dinah Bevington came forward to present the Personnel Cabinet’s report. Mr. Joe Phelps, Assistant Director for Council 62 from AFSME, and Mr. Bill Ryan, Chairman of the Governor’s Employee Advisory Council (GEACC), were also present.

Ms. Bevington reported that five regulations have been amended and provided the Board with a summary of those changes, some of which are “cleanup” of outdated language. Amendments were made to:

- 101 KAR 2:076 – Vacancies, details and temporary overlap for classified service;
- 101 KAR 2:102 – Leave regulations for classified service;
- 101 KAR 2:095 – Service regulation for classified service;
- 101 KAR 3:015 – Leave regulation for unclassified service;
- 101 KAR 3:050 – Service regulation for unclassified service.

Mr. Blevins asked about employees who are injured on the job. Ms. Bevington stated injured employees are treated the same as an employee who is on sick leave; the employee’s job is “saved for one year.” Ms. Bevington stated that this benefit is more than what the private sector provides for an employee. Chairman Sapp asked what the difference is between reinstatement and reemployment rights. Ms. Bevington stated that injured employees are given preferential treatment as far as reinstatement rights and return to work programs (placement into an agency without a register); however, they do not have the same rights as reemployment (laid-off employees given priority on a register). Judge Chandler wanted to know why an employee returning to work from sick leave does not have the same rights as a laid-off employee. Ms. Bevington responded that would require legislative action as reemployment rights are provided by statute. Ms. Bevington said she would be happy to work with the Board to make any necessary legislative changes. Chairman Sapp stated that this should be given consideration.

Mr. Blevins asked about voting leave and employees getting four hours voting leave to accomplish this. Specifically, he wanted to know if it violated the constitution if an employee voted earlier or later and not within the specific set time to vote and still be given four hours voting leave. Ms. Bevington stated she would brief the issue if given specific information.

At the conclusion of the Personnel Cabinet’s report, Chairman Sapp called the parties forward for oral arguments.

5. **ORAL ARGUMENTS**

A. Daniel Leland v. Justice and Public Safety Cabinet (Corrections)

Present for oral argument were counsel for Appellant, the Hon. Joseph Lane; and counsel for Appellee, the Hon. Wesley Duke. After presenting oral arguments, the parties answered questions from the Board.

6. INVESTIGATIONS

A. Update on Department of Agriculture Investigation

Mr. Sipek advised that interviews are almost completed. Following completion of those interviews, the next step will be to prepare his report for the Board.

B. Michael O'Brien Request – Justice and Public Safety Cabinet (DJJ) --Appellee's Response (Follow-up)

The Hon. Adam Adkins came forward on behalf of the Agency.

Mr. Adkins advised that Mr. O'Brien was satisfied with the check amounts, with the exception of the COBRA payments. However, if Mr. O'Brien provides documentation (i.e. cancelled checks) as proof of the COBRA payments he made while he was off work, DJJ will reimburse him. Mr. Adkins did request this information from the insurance company, but he is not sure if they will provide this information to him. Mr. Adkins stated that if the insurance company requires a release from Mr. O'Brien, he will get one from him.

7. CLOSED SESSION

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Judge Chandler seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (10:30 a.m.)

Mr. Hutcheson moved to return to open session. Dr. Stevens seconded and the motion carried 7-0. (11:41 a.m.)

8. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

- A. Daniel Leland v. Justice and Public Safety Cabinet [Corrections] (2012-110)

Dr. Stevens moved to note Appellee's Exceptions and oral arguments and to accept the recommended order sustaining the appeal. Judge Chandler seconded and the motion carried 6-1, with Mr. Hutcheson opposing.

- B. Shena Back v. Justice and Public Safety Cabinet [Corrections] (2012-101)
(Passed from March Meeting) (Deferred from April)

Mr. Gillis moved to note Appellee's exceptions, Appellant's response, and oral arguments and to accept the Final Order Altering the recommended order and dismissing the appeal, as attached to the minutes. Mr. Hutcheson seconded and the motion carried 7-0.

- C. Catherine Partlow v. Justice and Public Safety Cabinet [Corrections] (2012-166)
(Deferred from April)

Ms. Herndon moved to note Appellee's exceptions and oral arguments and to accept the Final Order Altering the recommended order and sustaining the appeal to the extent, as attached to the minutes. Mr. Blevins seconded and the motion carried 7-0.

- D. Dottie Stone v. Justice and Public Safety Cabinet [Juvenile Justice] (2012-034)
(Deferred from April)

Mr. Gillis moved to note Appellant's exceptions, Appellee's response, and oral arguments and to accept the Final Order Altering the recommended order and sustaining the appeal, as attached to the minutes. Judge Chandler seconded and the motion carried 7-0.

- E. Earl D. Gardner v. Transportation Cabinet (2011-193)
(Deferred from April)

Mr. Blevins moved to note Appellee's exceptions, Appellant's response and to accept the Final Order Altering the recommended order and dismissing the appeal, as attached to the minutes. Dr. Stevens seconded and the motion carried 7-0.

- F. Robert Blackburn v. Justice and Public Safety Cabinet [Corrections] (2012-100)

Mr. Hutcheson moved to note Appellant's Exceptions (returned as untimely) and to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 7-0.

- G. Julie Hettinger v. Education and Workforce Development Cabinet (2012-180)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

- H. Charles Wilkins v. Justice and Public Safety Cabinet [Corrections] (2012-218)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 7-0.

9. **WITHDRAWALS**

Dr. Stevens moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Hutcheson seconded and the motion carried 7-0.

- A. Stephen Barnett v. Cabinet for Health and Family Services and Personnel Cabinet (2 appeals)
- B. Paula Cissell v. Transportation Cabinet
- C. Robert William Keith v. Energy and Environment Cabinet
- D. Clayton Brooks v. Transportation Cabinet and Personnel Cabinet
- E. Phillip Daugherty v. Education and Workforce Development Cabinet
- F. Tina Fisher v. Personnel Cabinet

10. **SETTLEMENTS**

Mr. Hutcheson moved to accept settlement "A" as submitted by the parties, and to sustain the appeal to the extent set forth in the settlement. Ms. Herndon seconded and the motion carried 4-3, with Chairman Sapp, Mr. Gillis, and Mr. Blevins opposing.

- A. Rondal Keith Jervis v. Justice and Public Safety Cabinet (Corrections) 3 appeals

Dr. Stevens moved to accept settlements "B," "C," "D," "E" and "F" *en bloc* as submitted by the parties, and to sustain the appeals to the extent set forth in the settlements. Mr. Hutcheson seconded and the motion carried 7-0,

- B. Kevin Mazza v. Justice and Public Safety Cabinet (Corrections)
- C. Jessica Tumey v. Cabinet for Health and Family Services

- D. Brenda Mumphrey v. Tourism, Arts and Heritage Cabinet (Parks)
- E. Cheryl Pettry v. Cabinet for Health and Family Services
- F. Diane Phillips v. Cabinet for Health and Family Services

11. **OTHER**

Personnel Cabinet's amendments to 101 KAR 2:076, 101 KAR 2:102, 101 KAR 2:095, 101 KAR 3:015 and 101 KAR 3:050

Dr. Stevens moved to approve the amended regulations submitted by the Personnel Cabinet. Mr. Hutcheson seconded and the motion carried 7-0. Further, as it pertains to 101 KAR 2:102, the Board believes employees injured on the job should be given the same or similar rights as laid-off and career employees and that if new legislation is required, the Board will assist in any way possible. Chairman Sapp asked Mr. Sipek to communicate this message to the Personnel Cabinet and to prepare a letter for his signature.

Chairman Sapp would like a motion made for staff to communicate to the agencies to include the signature of appointing authorities on any settlements before the Board. Dr. Stevens made this motion. Mr. Blevins seconded and the motion carried 7-0.

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Hutcheson moved to adjourn. Ms. Herndon seconded and the motion carried 7-0. (11:50 a.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member

Tommy W. Chandler, Member

Donald W. Blevins, Member

Ramona Herndon, Member